Made on Condition of H. Dying without Children, Held to Include One Living at Death of Testator, though Dying Before H.—Children of V. living at testator's death, and such as might afterwards be born before the death of H. leaving no children, including a child of V., who died after her, but before H., are the persons to take under the executory devise contained in the provision: Should H. die leaving no children, the property loaned her (by a prior clause of the will) "I leave in trust for the benefit of V. and children," to be managed as directed in regard to all property loaned to her; "managed" either being used in its ordinary sense, and not in the sense of managed and divided, or its use in the latter sense being so doubtful that the doubt will be resolved against such use, in favor of the rule that early, rather than deferred, vesting of estates and of rights of expectancy are favored in the law, notwithstanding clauses loaning property to V. provided, not only for its being managed by a trustee, and not being subject to debts of her husband, but also for it being divided at V.'s death among her living children and the descendants of any deceased.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 850, et seq.]

Appeal from Circuit Court, Sussex County.

Suit by Miles Barham and others against Hannah B. Prince. Decree for plaintiffs, and defendant appeals. Reversed and remanded.

R. H. Mann, of Petersburg, and *W B. Cocke,* of Stoney Creek; for appellant.

R. W. Arnold, of Waverly, *Plummer & Bohannan,* of Petersburg, and *Buford & Peterson,* of Lawrenceville, for appellees.

CITY OF RICHMOND *v.* CHILDREY.

June 10, 1920.

[103 S. E. 630.]

1. Eminent Domain (§ 1*)—Right Wholly Statutory.—The right to take or damage private property for public use is wholly statutory, it is in derogation of the common law, and can only be exercised to the extent and manner provided by law, and the Legislature may delegate its power to appropriate subordinate agencies.

[Ed. Note.- For other cases, see 5 Va.-W. Va. Enc. Dig. 70.]

2. Eminent Domain (§ 169*)—Resolution Directing Street Grading Must Precede Ascertainment of Damages.—Under Act March 12, 1908 (Acts 1908, c. 217), as amended by Act March 12, 1912 (Acts

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

1912, c. 160), authorizing a municipal administrative board to determine damages because of change of street grades, a resolution directing the grading to be done must precede the ascertainment of damages by the board, and an ascertainment of damages before such authorization by resolution is ineffectul.

Error to Law and Equity Court of City of Richmond.

Trespass on the case by one Childrey against the City of Richmond. Judgment for plaintiff, and defendant brings error. Affirmed.

H. R. Pollard, of Richmond, for plaintiff in error.
A. H. Sands, of Richmond, for defendant in error.

KELLO *v.* KELLO'S EX'RS et al.

June 10, 1920.

[103 S. E. 633.]

1. Wills (§ 441*)—Circumstances at Testator's Death Considered.—To comprehend the scheme which the testator had in mind, will is to be construed with reference to the circumstances and conditions surrounding its execution.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789, et seq.]

2. Wills (§ 450*)—Effect Should Be Given All Parts.—A will should be so interpreted as to give effect to every part and word thereof, provided some effect can be given to each part not inconsistent with some intent manifested by the entire instrument.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 782.]

3. Wills (§ 456, 463, 470*)—Words Need Not Be Given Ordinary Meaning; When Necessary to Give Effect to Intention.—The intention of the testator must be sought from the whole instrument, but words may be rejected or construed in a sense different from their ordinary meaning when necessary to give effect to the intention ascertained.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 785, 786.]

4. Wills (§ 506 (2)*)—Bequest to "Nearest Heirs" Is to Those Taking under Statute of Descent.—Where testator, after making numerous bequests, bequeathed the residue of his estate to be divided equally among his nearest heirs and it appeared that he left a brother, nieces and nephews, the children of deceased brother and sisters, as well as a great-niece and great-nephews, etc., held, that "nearest heirs" will not be construed as meaning nearest in blood or as nearest of kin and giving the entire residue to the brother, but will be deemed

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.